

Hon. Lauren King

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

RICHARD ORTOLI, as Administrator CTA
of the Estate of Paul-Henri Louis Emile
Nargeolet, Deceased,

Plaintiff,

vs.

OCEANGATE INC., THE ESTATE OF R.S.
RUSH III, TONY NISSEN,
ELECTROIMPACT INC., JANICKI
INDUSTRIES, INC. and HYDROSPACE
GROUP, INC.,

Defendants.

No. 2:24-cv-01223-LK

**DEFENDANT ELECTROIMPACT
INC.'S MOTION TO DISMISS**

NOTE ON MOTION CALENDAR:
February 10, 2025

With Oral Argument

I. CONFERENCE OF COUNSEL

Pursuant to this Court's Standing Order for All Civil Cases, the parties conferred on October 14, 2024, to discuss this motion.

II. INTRODUCTION

As set forth below, Plaintiff's Jones Act claims against Electroimpact are improper, as Paul-Henri Louis Nargeolet was not an employee of Electroimpact Inc. (Electroimpact). Moreover, because this loss took place more than three nautical miles from the shore of the

United States, the Death on the High Seas Act (DOHSA), 46 U.S.C. §30301, applies and provides the sole remedy for Plaintiff's recovery. This statute preempts and bars Plaintiff's claims under Washington State law and General Maritime Law.

As a result, Electroimpact asks that this Court dismiss with prejudice all claims asserted under the Jones Act against Electroimpact. Furthermore, Electroimpact asks that the Court dismiss with prejudice all claims against Electroimpact which are asserted under Washington State law, General Maritime law, or are otherwise preempted by the Death on the High Seas Act.

III. STATEMENT OF FACTS

This lawsuit arises out of the failure of the Titan submersible on June 18, 2023. Dkt. 1-1 paragraph 1.1 At the time, the Titan was in the North Atlantic, near the location of the Titanic shipwreck. Dkt. 1-1 paragraph 1.1 This area is near the coast of Newfoundland and is more than three nautical miles from the cost of the United States of America. Dkt. 1-1 paragraph 1.1 Mr. Nargeolet was on the Titan at the time of loss and died in the incident. Dkt. 1-1 paragraph 5.6

The Plaintiff is Mr. Nargeolet's Estate. Plaintiff has filed suit against Electroimpact and other Defendants. Plaintiff asserts claims against Electroimpact under the Jones Act, Washington State law, and General Maritime law.

Specifically, the Plaintiff makes the following allegations in the Complaint:

- **1.1** On June 18, 2023, in the waters of the North Atlantic off the coast of Newfoundland, Paul-Henri Nargeolet and five other crew members boarded the manned deep-sea submersible TITAN and began a descent towards the most famous shipwreck in history – the Titanic. Mere hours later, the world learned that TITAN'S surface support ship had lost contact with the submersible, and waited with bated breath for further news of the crew's plight. Ultimately, everyone's worst fears were confirmed: the TITAN had suffered a catastrophic implosion under the tremendous weight of the ocean's depths. All five crewmembers, including Nargeolet, died.
- **2.1** This is an action within the maritime jurisdiction of this Court. This claim is maintained under the Jones Act, 46 U.S.C. § 30104 et

seq., and the General Maritime Law of the United States, and any other applicable laws that Plaintiff will plead and prove. Plaintiff hereby exercises the right to pursue the claims asserted herein in state court, pursuant to the Savings to Suitors clause, 28 U.S.C. § 1333.

- **2.2** In the alternative, Plaintiff brings these claims against Defendants under Washington state law for negligence, wrongful death, and products liability.
- **5.60** At all relevant times the vessel TITAN was operating in navigable waters of the North Atlantic, near the location of the Titanic wreckage.
- **6.4** On June 18, 2023, the TITAN imploded in navigable waters of the North Atlantic Ocean, off the coast of Newfoundland, Canada and beyond three nautical miles from the shore of the United States.

The Plaintiff alleges the following causes of action against Electroimpact and other defendants:

- Wrongful Death, Negligence, and Gross Negligence Under General Admiralty Law
- Negligence and Gross Negligence Under The Jones Act
- Vessel Unseaworthiness Under The General Maritime Law
- Products Liability¹
- Wrongful Death Under Washington State Law
- Pre-Death Pain and Suffering and Mental Anguish²

Dkt 1-1, paragraphs 6.1-11.3.

Based upon these causes of action, Plaintiff is seeking to recover damages for loss of support, loss of services, loss of inheritance, mental pain and anguish, funeral expenses, non-economic damages, pain and suffering, and punitive damages. Dkt 1-1, paragraph 12.6.

IV. LEGAL AUTHORITY AND ARGUMENT

A. Motion to Dismiss Standard

¹ This claim is brought “under the General Maritime Law of the United States and/or Washington Product Liability Act.” Dkt. 1-1, paragraph 9.2

² This claim is brought “under the Jones Act. 46 U.S.C. § 30104 et seq., and/or Washington State Law.” Dkt. 1-1, paragraph 11.2

1 A motion to dismiss pursuant to Rule 12(b)(6) tests the legal sufficiency of the claims.
 2 *See Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). “To survive a motion to dismiss under
 3 Rule 12(b)(6), a complaint must contain sufficient factual matter, accepted as true, to state a
 4 claim for relief that is plausible on its face.” *Aschroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting
 5 *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). While the court “must take all
 6 allegations of material fact as true . . . ‘[c]onclusory allegations of law and unwarranted
 7 inferences . . . are insufficient to avoid’ dismissal.” *Kwan v. SanMedica Int’l*, 854 F.3d 1088,
 8 1096 (9th Cir. 2017) (citations omitted). “Legal conclusions may provide a framework for a
 9 complaint, but ‘they must be supported by factual allegations.’” *Id.* Unsupported conclusions
 10 “are not entitled to the assumption of truth.” *Id.* Furthermore, in evaluating a Rule 12(b)(6)
 11 motion, the Court can “consider documents referenced extensively in the complaint” and
 12 “documents that form the basis of plaintiff’s claims[.]” *Concept Dorssers v. Pac. Nw. Title Ins.*
 13 *Co.*, No. C09-1692RSL, 2010 U.S. Dist. LEXIS 26584, at *1 (W.D. Wash. Mar. 19, 2010). A
 14 defendant is entitled to dismissal where “plaintiff can prove no set of facts in support of his claim
 15 which would entitle him to relief”, *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957), whether due to
 16 “the lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable
 17 legal theory”. *Balestreri v. Pacifica Police Dept.*, 901 F.2d 696, 699 (9th Cir. 1990).

18 **B. Plaintiff’s Jones Act Claims Against Electroimpact Are Not Proper**

19 The Court in *In re Anderson*, 847 F. Supp. 2d 1263, 1268 (W.D. Wash. 2012), sets forth
 20 the relief available under the Jones Act, and requirements for recovery under the same:

21 As amended, the Jones Act allows a "seaman injured in the course
 22 of employment or, if the seaman dies from the injury, the personal
 23 representative of the seaman . . . [to] bring a civil action at law, with
 the right of trial by jury, against the employer." 46 U.S.C. §
 30104. The Act has two threshold requirements. First, it provides a
 cause of action only to injured seamen or their personal

1 representatives. *Id.*; *Graca v. Rosebank Mar., Inc.*, No. 04-14302,
2 2005 WL 6458603, at *2 (11th Cir. 2005) (per curiam); *Ivy v. Sec.*
3 *Barge Lines, Inc.*, 585 F.2d 732, 734 (5th Cir. 1978). Second, it
4 limits that cause of action to suits against the seaman's employer. §
5 30104; *Cosmopolitan Shipping Co. v. McAllister*, 337 U.S. 783, 787
6 n.6, 69 S. Ct. 1317, 93 L. Ed. 1692 (1949).

7 *In re Anderson*, 847 F. Supp. 2d 1263, 1268 (W.D. Wash. 2012).

8 As set forth above, the Jones Act only provides a cause of action for injured seamen or
9 their personal representatives and limits the cause of action to suits against the seaman's
10 employer. Further, for claims under the Jones Act, the seaman must prove the existence of an
11 employee-employer relationship with the particular Jones Act defendant. *Cosmopolitan*, 337
12 U.S. at 790-91. "Only one person, firm, or corporation can be sued as employer." *Id.* at 791. A
13 Jones Act employer is liable for "injuries negligently inflicted on its employees by its officers,
14 agents, or employees." *Hopson v. Texaco, Inc.*, 383 U.S. 262, 263, 86 S. Ct. 765, 15 L. Ed. 2d
15 740 (1966).

16 Plaintiff's Complaint does not allege that Mr. Nargeolet was an employee of
17 Electroimpact. Dkt. 1-1. However, Plaintiff's Complaint repeatedly alleges that Mr. Nargeolet
18 was an employee of OceanGate. Dkt. 1-1, paragraph 1.3. Additionally, Plaintiff's only
19 allegations against Electroimpact simply state that Electroimpact performed a limited amount of
20 work in connection with OceanGate's construction of the Titan submersible. Specifically, the
21 Complaint states that, "Defendant ELECTROIMPACT INC. laid carbon fibers for the TITAN's
22 second hull." Dkt. 1-1, paragraph 5.63. This is the sole allegation directed towards Electroimpact
23 and its involvement with the Titan submersible.

These allegations establish that that Mr. Nargeolet was not an employee of Electroimpact.
No other allegation in the Complaint establishes any connection between Electroimpact and Mr.

1 Nargeolet. Additionally, Electroimpact did issue payment, direction, or supervision to Mr.
2 Nargeolet. Nor did Electroimpact have the power to hire or fire Mr. Nargeolet.

3 As a result, dismissal with prejudice of Plaintiff's Jones Act claims against Electroimpact
4 is proper because Electroimpact was not, and has not alleged to have been, Mr. Nargeolet's
5 employer.

6 **C. Plaintiff's Claims Are Barred By The Death On The High Seas Act**

7 Electroimpact also seeks dismissal of Plaintiff's claims for wrongful death, negligence,
8 and gross negligence under general admiralty law as they are preempted by DOHSA.

9 DOHSA states in pertinent part as follows:

10 §30302. Cause of action

11 When the death of an individual is caused by wrongful act, neglect,
12 or default occurring on the high seas beyond 3 nautical miles from
13 the shore of the United States, the personal representative of the
decendent may bring a civil action in admiralty against the person or
vessel responsible. The action shall be for the exclusive benefit of
the decendent's spouse, parent, child, or dependent relative.

14 §30303. Amount and apportionment of recovery

15 The recovery in an action under this chapter shall be a fair
16 compensation for the pecuniary loss sustained by the individuals for
whose benefit the action is brought. The court shall apportion the
recovery among those individuals in proportion to the loss each has
sustained.

17 46 U.S.C. §30302-30303.

18 Congress enacted DOHSA in 1920. Its purpose was to address the dilemma of there being
19 no remedy for death occurring on the high seas, outside the jurisdiction of the US Courts. The
20 Supreme Court of the United States describes the development and purpose of DOHSA as
21 follows:

22 It was in this atmosphere that Congress considered legislation
23 designed to provide a uniform and effective wrongful death remedy
for survivors of persons killed on the high seas. In 1920, Congress

1 enacted DOHSA, in which it finally repudiated the rule of *The*
 2 *Harrisburg* for maritime deaths occurring beyond state territorial
 3 waters by providing for a federal maritime remedy for wrongful
 4 deaths more than three miles from shore. DOHSA limits the class
 5 of beneficiaries to the decedent's "wife, husband, parent, child, or
 6 dependent relative," establishes a 3-year statute of limitations
 7 period, allows a suit filed by the victim to continue as a wrongful
 8 death action if the victim dies of his injuries while suit is pending,
 9 provides that contributory negligence will not bar recovery, and
 10 declares that "recovery . . . shall be a fair and just compensation for
 11 the pecuniary loss sustained by the persons for whose benefit the
 12 suit is brought. . . ."

13 *Offshore Logistics, Inc. v. Tallentire*, 477 U.S. 207, 214-15, 106 S. Ct. 2485, 2490, 91 L. Ed.
 14 2d 174 (1986).

15 DOHSA's application has been described by this Court as follows:

16 DOHSA applies whenever "the death of an individual is caused by
 17 wrongful act, neglect, or default occurring on the high seas beyond
 18 3 nautical miles from the shore of the United States." It provides that
 19 when such a death occurs "the personal representative of the
 20 decedent may bring a civil action in admiralty against the person or
 21 vessel responsible." And, when DOHSA applies, it applies
 22 exclusively, "preempt[ing] all survival claims for deaths on the high
 23 seas" other than the Jones Act.

24 *In Re Anderson*, 847 F. Supp. 2d 1263, 1270 (W.D. Wash. 2012)(internal citations omitted).

25 In this matter, the application of DOHSA is clear. According to Plaintiff's Complaint,
 26 Mr. Nargeolet died on board the Titan submersible, beyond three nautical miles from the shore
 27 of the United States. Dkt. 1-1, paragraph 6.4. His death occurred on the high seas, and therefore
 28 is subject to DOHSA.

29 Plaintiff may argue that DOHSA is inapplicable because Mr. Nargeolet's death was
 30 caused by wrongful acts allegedly occurring within the borders of the United States. However,
 31 DOHSA applies even if the "wrongful act, neglect, or default" required by the statute took place
 32 inside the United States.

1 Federal courts have squarely resolved this question in Electroimpact's favor. For
2 example, in *LaCourse v. PAE Worldwide, Inc.*, 980 F.3d 1350, 1353 (11th Cir. 2020), the Plaintiff
3 estate brought claims following the death of retired Air Force Lieutenant Matthew LaCourse, the
4 sole person on board an Air Force F-16 fighter jet that crashed into the Gulf of Mexico. *Id.* Lt.
5 Col. LaCourse tragically died in the incident. *Id.*

6 Following the crash, claims were brought against PAE Worldwide Inc. (PAE) because
7 either PAE or its predecessor allegedly failed to adequately maintain the hydraulic systems in the
8 jet at issue. *Id.*

9 Lt. Col. Lacourse's estate filed a wrongful death action in Florida state court, alleging
10 state law claims for negligence, breach of warranty, and breach of contract. *LaCourse*, 980 F.3d
11 at 1354. PAE removed the matter to federal court. *Id.* PAE then moved for summary judgment,
12 arguing that DOHSA applied to the suit and provided the exclusive remedy based upon the
13 location of the crash. *Id.* PAE further moved the Court to strike the Plaintiff's state-law claims.

14 The court granted PAE's motion, determined that DOHSA preempted all other wrongful
15 death causes of action, and dismissed the state-law claims. *Id.* On appeal Plaintiff contended
16 that the district court erred in applying DOHSA, because although the death occurred more than
17 twelve nautical miles from the United States, the alleged maintenance of the aircraft occurred on
18 land. *Id.*

19 The Court recognized that although the statute states that the "wrongful act, neglect, or
20 default" must take place on the high seas, controlling precedent stated otherwise. Specifically,
21 the Court said:

22 In *Offshore Logistics, Inc. v. Tallentire*, for instance, the Supreme
23 Court observed that "admiralty jurisdiction is expressly provided
under DOHSA [where] the accidental deaths occurred beyond a
marine league from shore." So too, in *In re Dearborn Marine*

1 *Service, Inc.*, our predecessor court, whose decisions bind
 2 us, recognized that "DOHSA has been construed to confer admiralty
 3 jurisdiction over claims *arising out of airplane crashes on the high*
 4 *seas though the negligence alleged to have caused the crash*
 5 *occurred on land.*" It's not for the three of us to second-guess the
 6 correctness of *Offshore Logistics* or *Dearborn Marine*. Because we
 7 are bound by those decisions, we are constrained to agree with the
 8 district court that DOHSA applies despite the fact that PAE's alleged
 9 negligence occurred on land at Tyndall Air Force Base.

10 *LaCourse*, 980 F. 3d at 1356 (internal citations omitted) (emphasis original).

11 Based upon this reasoning, even if Plaintiff alleges that Mr. Nargeolet's death was caused
 12 by acts occurring inside the United States, DOHSA still applies and preempts Plaintiff's claims.

13 As a result, under DOHSA, Plaintiff's claims based on Washington state law and General
 14 Maritime law are precluded. As stated by Judge Lasnik, "when DOHSA applies, it applies
 15 exclusively, 'preempt[ing] all survival claims for deaths on the high seas' other than the Jones
 16 Act." *In re Anderson*, 847 F. Supp. 2d 1263, 1270 (W.D. Wash. 2012). In that case, the Court
 17 held that Plaintiff's common law negligence and unseaworthiness claims were preempted and
 18 precluded by DOHSA. *Id.* at 1271. Further, the court in *Khung Thi Lam v. Glob. Med. Sys.*, 127
 19 Wn. App. 657, 662, 111 P.3d 1258, 1260 (2005) found, "DOHSA preempts state wrongful death
 20 and survival statutes and provides the exclusive remedy for deaths on the high seas." The same
 21 reasoning should apply to this matter. In light of the admitted location of Mr. Nargeolet's death,
 22 his Estate is limited to claims under DOHSA, and the Estate's non-DOHSA claims should be
 23 dismissed with prejudice.

24 **D. Plaintiff's Available Damages Under DOHSA**

25 As set forth above, assuming Plaintiff's claims against Electroimpact for wrongful death,
 26 negligence, and gross negligence under general admiralty law are preempted, and the Jones Act
 27 claim is dismissed, Plaintiff's only remaining claim against Electroimpact would be pursuant to

DOHSA.³ Recovery under DOHSA is limited to pecuniary losses. The Court provided more specificity regarding what pecuniary damages are available: “. . .as a practical matter, these damages are limited to two things: loss of support and loss of services,” *Howard v. Crystal Cruises*, 41 F.3d 527, 530 (9th Cir. 1994) (citing 2 *Martin J. Norris, The Law of Seamen* § 29:1, at 307 (4th ed. 1985)).

Regarding damages available under DOHSA, “In the DOHSA setting, it is well established that recoverable damages include loss of support, loss of services of the decedent, loss of nurture, guidance, care and instruction, loss of inheritance, and those funeral expenses actually paid by the dependents.” Thomas J. Schoenbaum, *Admiralty and Maritime Law* § 7-2 (1987); *see also Sea-Land Serv., Inc. v. Gaudet*, 414 U.S. 573, 584-95 (1974); *Boykin v. Bergesen D.Y. A/S*, 835 F. Supp. 274, 285 (E.D. Va. 1993). “Loss of support and loss of inheritance are generally predicated on a showing of full or partial dependency.” *See, e.g., Zicherman v. Korean Air Lines Co., Ltd.*, 43 F.3d 18, 23 (2 Cir. 1994); *Evich v. Connelly*, 759 F.2d 1432, 1433-34 (9 Cir. 1985), *cert. denied*, 484 U.S. 914 (1987) (denying recovery for pecuniary loss to non-dependent siblings).

“Accordingly, DOHSA allows certain relatives of the decedent to sue for their pecuniary losses but does not authorize recovery for the decedent's pre-death pain and suffering.” *Dooley v. Korean Air Lines Co.*, 524 U.S. 116, 118, 118 S. Ct. 1890, 1892, 141 L.Ed.2d 102, 106 (1998). “By authorizing only certain surviving relatives to recover damages, and by limiting damages to the pecuniary losses sustained by those relatives, Congress provided the exclusive recovery for deaths that occur on the high seas.” *Id.* “This Act limits the class of beneficiaries to the

³ Electroimpact’s Motion to Dismiss does not address or intend to address the merits of Plaintiff’s DOHSA claim. Electroimpact reserves all rights and defenses.

1 decedent's wife, husband, parent, child, or dependent relative.” *Mobil Oil Corp. v.*
 2 *Higginbotham*, 436 U.S. 618, 620, 98 S. Ct. 2010, 2012, 56 L.Ed.2d 581, 584 (1978).

3 Further, in *Garrett v. Air Logistics*, Civil Action No. 95-2190, Section "L", 1996 U.S.
 4 Dist. LEXIS 12588, at *8-9 (E.D. La. Aug. 23, 1996), defined the measure of recovery under
 5 this provision is the actual pecuniary benefits that the decedent's beneficiaries could reasonably
 6 have expected to receive from the continued life of the decedent. *Solomon v. Warren*, 540 F.2d
 7 777 (5th Cir. 1976), reh'g denied, 545 F.2d 1298; cert. dismissed, sub nom *Warren v. Serody*,
 8 434 U.S. 801, 54 L. Ed. 2d 59, 98 S. Ct. 28 (1977).

9 As a result, assuming Plaintiff proceeds with a DOHSA claim against Electroimpact,
 10 Plaintiff's exclusive remedy under DOHSA is for the actual pecuniary benefits that the
 11 decedent's beneficiaries could reasonably have expected to receive from the continued life of the
 12 decedent. Those benefits include loss of support, loss of services of the decedent, loss of nurture,
 13 guidance, care and instruction, loss of inheritance, and those funeral expenses actually paid by
 14 the dependents.

15 **E. Damages Precluded Under DOHSA**

16 The Court in *In re Anderson* No. C09-1436RSL, 2012 U.S. Dist. LEXIS 53176, at *13
 17 (W.D. Wash. Apr. 16, 2012) sets forth damages which are not available under DOHSA:

18 It is settled law in this circuit that DOHSA "preclude[s] recovery for
 19 nonpecuniary losses, such as loss of society or consortium, for
 20 deaths that occur on the high seas." *Id.* (citations omitted). "Punitive
 21 damages are therefore also unavailable under DOHSA." *Bergen v.*
F/V St. Patrick, 816 F.2d 1345, 1347 (9th Cir. 1987).
 22 *Id.*

23 As a result, claims or damages related to loss of society or consortium are not available
 under DOHSA. Additionally, punitive damages are also unavailable to Plaintiff.

1 In regard to whether beneficiaries are entitled to mental pain and anguish for a claim made
2 under DOHSA, the Ninth Circuit held:

3 Because DOHSA creates only a cause of action for pecuniary
4 damages suffered by the estate, and the survivor's grief is a
5 nonpecuniary damage, we must hold that the district court erred in
6 permitting Saavedra to proceed on that claim and in awarding
7 judgment upon it.

8 *Saavedra v. Korean Air Lines Co.*, 93 F.3d 547, 552 (9th Cir. 1996).

9 As a result, nonpecuniary damages for mental pain and anguish are unavailable to
10 Plaintiff.

11 Additionally, the United States Supreme Court has set forth the following regarding
12 recovery for a decedent's pre-death pain and suffering:

13 The comprehensive scope of DOHSA is confirmed by its survival
14 provision, see *supra*, at 5, which limits the recovery in such cases to
15 the pecuniary losses suffered by surviving relatives.

16 . . .

17 In sum, Congress has spoken on the availability of a survival action,
18 the losses to be recovered, and the beneficiaries, in cases of death on
19 the high seas. Because Congress has chosen not to authorize a
20 survival action for a decedent's pre-death pain and suffering, there
21 can be no general maritime survival action for such damages.

22 *Dooley v. Korean Air Lines Co.*, 524 U.S. 116, 124, 118 S. Ct. 1890, 1895, 141 L.Ed.2d 102,
23 109-10 (1998).

Therefore, damages related to Mr. Nargeolet's pre-death pain and suffering are not
recoverable.

24 V. CONCLUSION

25 Based upon the foregoing, Electroimpact respectfully asks that this Court dismiss
26 Plaintiff's preempted claims against Electroimpact with prejudice. To the extent Plaintiff seeks
27

1 to allege a claim under DOHSA against Electroimpact, leave to amend the Complaint may also
2 be appropriate. A proposed order granting Electroimpact's requested relief is submitted herewith.

3 DATED this 13th day of January 2025.

4 I certify that this memorandum contains 3,497
5 words, in compliance with the Local Civil Rules.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies under the penalty of perjury under the laws of the State of Washington that on this date I caused to be served in the manner noted below a true and correct copy of the foregoing on the following party(ies):

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DATED this 13th day of January 2025 at Seattle, Washington.

s/ Brittany Lang
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